



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: American Contract Health, Incorporated
File: B-236544.2
Date: January 17, 1990

DIGEST

Proposal to provide personal services of health professionals was properly excluded from the competitive range where agency found offeror had difficulty providing similar services in the past and therefore received a low score under the evaluation factor relating to previous experience, and where agency concluded that offeror's proposed compensation for health professionals would be insufficient to recruit and retain such individuals.

DECISION

American Contract Health, Incorporated (ACHI) protests the exclusion from the competitive range of its proposal submitted in response to request for proposals (RFP) No. DADA10-89-R-0019, issued by the U.S. Army Health Services Command for dentists at six Army dental clinics. ACHI alleges its proposal was improperly found technically unacceptable and excluded from the competitive range because the agency failed to follow the evaluation criteria set forth in the RFP; specifically, ACHI asserts the agency failed to evaluate ACHI's prior experience in performing this type of work, or alternatively, improperly evaluated ACHI's prior experience. Additionally, ACHI claims the Army unreasonably determined that ACHI's proposal presented significant risk to the government because of the Army's flawed evaluation of ACHI's prior experience and proposed compensation plan.

We deny the protest.

The solicitation, issued May 26, 1989, and set-aside for small business, sought offers for dentists on a personal services basis at the following Army dental clinic locations: Fort Bliss, Texas (5 dentists); Fort Jackson, South Carolina (2 dentists); Fort Leonard Wood, Missouri

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(5 dentists); Presidio of San Francisco (2 dentists); Fort Rucker, Alabama (1 dentist); and Fort Sill, Oklahoma (3 dentists). Section M.3.c. of the RFP indicated that the government sought proposals offering "value in meeting the [RFP's] requirements--quality performance with acceptable risk at a fair and reasonable price." The evaluation factors in the RFP were technical quality and price, with technical quality rated twice as important as price.

The technical quality factor in the evaluation scheme consisted of three subfactors: management principles, divided into equal elements for experience/qualifications and employee/subcontractor relations; manning/understanding of the requirement/commitment, divided into equal elements for recruitment and retention; and compensation plan, to be evaluated for realism and adequacy of compensation. These three technical quality subfactors were weighted as follows: management principles, 40 percent; manning/understanding of the requirement/commitment, 40 percent; and compensation plan, 20 percent. The RFP further stated that each offer would be subjected to price analysis.

Sixteen initial proposals were received in response to the RFP. After technical evaluation, the Army determined that seven offerors should be included in the competitive range for all sites except Fort Sill, Oklahoma; at the Fort Sill location, the competitive range consisted of eight offerors. ACHI's proposal was included within the competitive range for every site, but was ranked initially as the lowest-rated offeror at every site.^{1/}

In its August 1 letter notifying ACHI that its proposal was within the competitive range, the Army directed the company to areas of its proposal requiring clarification and additional documentation. ACHI responded immediately and also provided a revised proposal by the August 28 due date for revised offers.

By letter dated September 12, the Army informed ACHI that its revised proposal was not within the agency's revised competitive range. The September 12 letter stated that acceptance of the proposal presented significant risk to the

^{1/} After the competitive range was established, an offeror outside the competitive range filed a protest with our Office challenging its exclusion. Upon reviewing the protest, the contracting officer revised the competitive range downward to include the offeror filing the protest and one other offeror. We then dismissed the protest as academic.

competitive range. The September 12 letter stated that acceptance of the proposal presented significant risk to the government, particularly with respect to the management principles and compensation plan subfactors of the technical quality factor. The Army stated in this letter that, in these two areas, the proposal was "not adequate to recruit and retain dentists and ensure the uninterrupted service that the government requires." On September 20, ACHI filed a protest with our Office.

ACHI protests initially that the Army failed to evaluate its prior experience in violation of the terms of the solicitation, or alternatively, that the Army's evaluation of ACHI's prior experience was erroneous and improper. According to ACHI, the contracting officer stated in a telephone conversation regarding the decision to exclude ACHI from the competitive range that previous contract performance of offerors was not considered in evaluating proposals. The Army denies ACHI's assertion and counters that ACHI mischaracterizes a statement made by the contracting officer that previous performance was not the only factor considered. In addition, the Army explains that ACHI's prior performance was not only evaluated, but resulted in a reduced score for the experience/qualifications element of the management principles subfactor. The Army's response and the documents provided with the agency report establish conclusively that the Army did consider ACHI's prior experience, regardless of the content of any alleged statement by the contracting officer to the contrary.

In evaluating ACHI's experience, the Army downgraded the proposal because of problems with ACHI's prior contract performance. ACHI responds that the Army review of its prior performance of certain Navy requirements was flawed, and points to its successful experience performing emergency purchase orders for the Army covering similar work. As discussed more fully below, we find the Army's evaluation of ACHI's experience was reasonable.

In a negotiated procurement, an agency may determine a competitive range consisting of those offers that have a reasonable chance of being selected for award. Federal Acquisition Regulation § 15.609. The evaluation of proposals, and the resulting determination of the competitive range, are matters within the discretion of the contracting agency since it is responsible for defining its needs and deciding on the best method of accommodating them. Vikonics, Inc., B-234365, May 11, 1989, 89-1 CPD ¶ 443. In reviewing protests concerning competitive range determinations, our function is not to reevaluate the proposal and make our own determination of its merits;

rather, we review the agency's evaluation as a whole to ensure that it had a reasonable basis. Telemechanics Inc., B-229748, Mar. 24, 1988, 88-1 CPD ¶ 304.

Section L.27.2.a.(1) of the RFP required offerors to provide a complete list of all federal government contracts awarded over the last 2 years, as well as the telephone number of the government officials administering those contracts. Using this list, the Army contacted the appropriate government officials, and concluded that ACHI had performed poorly on two Navy contracts; specifically, documents produced by the Army indicated that ACHI had been terminated for default in more than one instance.

In its response to the Army's report, ACHI insisted that it had never been terminated for default on any government contract, and upon closer review, the Army retracted its claim. Instead, the Army states that ACHI performed poorly, or not at all, with respect to a partnership agreement between ACHI and the Navy for two separate locations under the Military Civilian Health Services Partnership Program.^{2/} These partnership agreements are not government contracts and thus technically are not subject to termination for default. Nevertheless, the Army noted that ACHI had difficulty providing dentists on a timely basis; had one partnership agreement withdrawn for nonperformance; and failed to provide the dentists identified in its proposals in some instances, while in others it provided dentists with serious credentials problems.

ACHI challenges the agency's conclusion that problems under the partnership agreements were the result of poor performance by ACHI, arguing that there may be other reasons, which ACHI does not describe in any detail, why a particular position cannot be filled. ACHI, in particular, objects to the Army's reliance on the fact that ACHI once furnished a physician whose license had been suspended for suspicion of participation in drug trafficking. ACHI asserts that it could not have known about the problems with this individual given the fact that he lied on his application and the problem did not surface in a credentials check with the Georgia medical licensing authorities because the problem arose in Florida.

We do not think that the Army relied disproportionately on this information in evaluating ACHI's proposal. The incident, when viewed in light of ACHI's past performance

^{2/} The Military Civilian Health Services Partnership Program is described in Department of Defense Directive No. 6010.12.

problems and questions about the adequacy of its proposed compensation plan, reasonably raised questions about the quality of personnel attracted by ACHI, and about how much background research ACHI performs on each individual. With regard to ACHI's general challenge to the Army's assessment of its past performance, we agree with the Army that past problems with filling positions reflects on ACHI's ability to attract and retain qualified personnel. Based on all the information available to the Army regarding ACHI's past performance, we find that the Army acted reasonably in downgrading ACHI's proposal in the experience element of the management subfactor, despite its error regarding the characterization of how ACHI's partnership agreement was terminated.

On a related issue, the Army concluded that ACHI's experience regarding three emergency purchase orders had limited relevance to the instant solicitation because the purchase orders involved a more restricted scope of work than the instant solicitation--i.e., the purchase orders did not require on-call services or back-up services in case of absences. ACHI challenged the Army's description of these Army purchase orders, and again, the Army retracted its earlier statement and agreed that the purchase orders did require on-call and back-up services. The Army maintains, however, that ACHI's other performance problems and its low proposed compensation, discussed below, reasonably raised questions about ACHI's ability to ensure successful contract performance. We agree.

In addition to the prior performance issues, ACHI challenges the Army's conclusion that ACHI's proposed compensation for its dentists is too low to recruit and retain dentists. Section L.26 of the RFP details the Army's concerns about adequacy of compensation, and concludes as follows:

"(c) The Government is concerned with the quality and stability of the work force to be employed on this contract. Professional compensation that is unrealistically low or not in reasonable relationship to the various job categories, since it may impair the Contractor's ability to attract and retain competent professional service employees, may be viewed as evidence of failure to comprehend the complexity of the contract requirements."

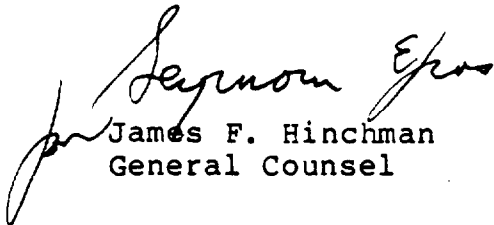
In evaluating the compensation plans of offerors, the Army calculated an independent government estimate of the compensation needed to attract and retain dentists at each of the six sites. Proposals offering compensation plans at

the rate estimated by the Army received the maximum number of points; proposals offering compensation plans number of points, depending on how far removed the plan was from the estimate. ACHI's compensation plan was awarded a zero point score as it fell below the predetermined range for awarding points for compensation plans.

ACHI argues that awarding a zero point score for compensation plans below the government estimate is unreasonable. The Army did not, however, award a zero point score simply because the plan fell below the government's estimate. Instead, a zero point score was given to plans falling outside the predetermined range above and below that estimate for which points were awarded. Given the Army's stated problems in recruiting and retaining dentists, we do not find the evaluation's emphasis on acceptable compensation, evenly applied, to be unreasonable.

Since the record supports the Army's conclusion that ACHI's proposal, when compared with the proposals of other offerors and with the evaluation criteria, no longer enjoyed a reasonable chance of being selected for award, the decision to exclude ACHI from the competitive range was proper. Telemechanics Inc., B-229748, supra.

The protest is denied.


James F. Hinchman
General Counsel